McGuireWoods LLP
Washington Square
1050 Connecticut Ave N.W.
Suite 1200
Washington, DC 20036-5317
Phone: 202.857.1700
Fax: 202.857.1737
www.mcguirewoods.com

James H. Lister
Direct: 202.857.1705

McGUIREWOODS

September 12, 2003

Filed via ECFS

Ms. Marlene Dortch
Secretary Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attention: Gregory M. Cooke
Wireline Competition Bureau

RE: Notice of Ex Parte Communication

CC Docket No. 96-128 (Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996)

Dear Ms. Dortch:

This letter is submitted to summarize an oral ex parte presentation occurring on September 10, 2003, regarding issues under consideration in the payphone compensation docket, and to provide additional information to the Commission in the form of a written ex parte communication.

The following persons participated in a conference call on September 10, 2003 initiated at the request of Commission Staff:

Gregory Cooke	Wireline Competition Bureau
Darryl Cooper	Wireline Competition Bureau
Henry Thaggert	Wireline Competition Bureau
Jack Yachbes	Wireline Competition Bureau
David Jones	CommuniGroup of K.C, Inc.
Chris Chellete	CommuniGroup of Jackson, Inc.
Harold Paulos	Transtel Communications, Inc.
James H. Lister	McGuireWoods LLP (attorneys)

Each of the companies participating in the call (the “Joint SBR Participants”) operates primarily as a switch-based reseller (“SBR”). Each has joined in opening comments and reply comments filed in this docket on June 23, 2003 and July 3, 2003 by a group of SBRs (the “Joint

SBRs").[1] These comments and reply comments address issues arising from the reversal by the D.C. Circuit of the *Second Order on Reconsideration*.[2]

1. Capabilities and Design of SBR Automated Payphone Compensation Systems

David Jones began the call by describing the payphone compensation systems that his company, CommuniGroup of K.C, Inc. ("CGI") used to track payphone calls and pay compensation prior to the effective date of the *Second Order on Reconsideration*.[3] During that period CGI paid Payphone Service Providers ("PSPs") directly. CGI's automated system then including the following elements: (1) the system detected completed calls from payphones to CGI customers, using a list of 1-8XX numbers assigned to CGI customers, (2) a count of the number of completed calls from each payphone ANI was maintained, (3) this count was matched electronically with diskettes/CD ROMS provided by PSPs containing lists of ANIs for payphones owned by them, (4) CGI made payment to each PSP based on the number of completed calls from ANI associated with that PSP.[4] This system took some time and effort to implement but ultimately was not burdensome. The system operated accurately.

Discussion then turned to the systems that CGI transitioned to after the effective date of implementation of the *Second Order on Reconsideration*, which adopted a requirement that the first facilities-based IXC ("FIXC") pay the PSP and seek reimbursement from the SBR. Under this FIXC-pays system, CGI's automated systems must still track payphone calls to completion in order to provide call completion reports to the FIXC whose services CGI is purchasing, and to review the payphone compensation reimbursement bills presented by the FIXC to CGI.

In short, the burden to CGI of tracking calls and calculating proper compensation amounts is at most marginally higher under a SBR-pays system than under a FIXC-pays system. Any small extra burden is more than offset by the practical complexities and risks associated with a FIXC-pays system. As detailed in the opening and reply comments filed by CGI and the other Joint Switch-Based Resellers, these include: (1) the risk that the FIXC will impose unreasonable administrative charges on the SBR, (2) the double liability risk – the risk that a PSP will interpret the rules as allowing it to sue the SBR directly if it fails to obtain payment from the

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[1] Opening Comments and Reply Comments filed by CommuniGroup of K.C., Inc. et al. (the "Joint SBRs") in CC Docket No. 96-128 on June 23, 2003 and July 3, 2003.

[2] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Second Order on Reconsideration*, 16 FCC.Rcd. 8098 (2001), *reversed sub nom*. Sprint Corp. v. FCC, 315 F.3d 369 (D.C. Cir. 2003).

[3] CGI operates and as a SBR has been in business for over 20 years providing long distance service in various areas including Kansas, Missouri and other states, generally in the Southwestern Bell Telephone Company region.

[4] The call record received by CGI included information identifying the ANI of the payphone. The presence or absence of payphone coding digits indicated whether the call was from a payphone.

FIXC, and (3) the uncompleted call risk – the risk that the FIXC will attempt to require the SBR to pay for uncompleted as well as completed calls, either directly or indirectly (by imposing unreasonable call completion reporting requirements).

Chris Chellete then described the payphone compensation systems currently used by his company, CommuniGroup of Jackson, Inc. ("Jackson"). Jackson provides service to some customers using its own facilities. For these calls Jackson tracks calls and pays PSPs directly. Jackson provides service to other customers as a SBR. Because it operates both as a facilities-based IXC and a SBR, Jackson must maintain two automated payphone compensation system, one for paying the PSPs for facilities-based calls and one for reimbursing the FIXC for SBR-based calls. While both systems provide for accurate compensation, they are duplicative. Adopting a rule under which the SBR pays the PSP directly would allow Jackson to consolidate these systems and pay PSPs directly for all calls, avoiding the burden of maintaining duplicative systems.

Harold Paulos then provided information regarding the experience of his company, Transtel Communications, Inc. ("Transtel"), which operates as a SBR. Mr. Paulos followed up on the comments of Mr. Jones and Mr. Chellete by describing technical meetings Transtel has had with PSPs to review Transtel's tracking of call completion information. Mr. Paulos explained that the research Transtel conducted in conjunction with these meeting confirmed the accuracy of Transtel's system for tracking call completion.

2. <u>Third-Party Verification of SBR Payphone Compensation Systems</u>

The Joint SBR Participants concluded the conference call by discussing the verification of systems by which SBRs would track calls and calculate PSP compensation. As explained in the call and supplemented in this letter, any procedures adopted for third-party verification of the accuracy of a carrier's systems (whether the carrier is a SBR or is serving customers with its own facilities) should:

- <u>Defer imposing costs of third-party verification upon any party until a PSP actually raises a good-faith dispute regarding the accuracy of a particular's carrier's reporting.</u> If the payments systems are working well and accepted by the PSP, there is no need to impose the costs of verification procedures on anyone.

- Preserve the confidentiality of the carrier's business records. The verifier should be any mutually acceptable independent C.P.A. firm knowledgeable regarding the FCC's rules and procedures and the automated systems involved.

- Be conducted at the systems level, based on a reasonable sampling methodology.

- <u>Fairly assign the costs of third-party verification as follows</u>: (1) if the carrier's systems are substantially accurate, the PSP requesting verification will pay the verifier's fees, (2) if the carrier's systems are not substantially accurate, defined as a finding that the carrier underpaid by 10% or more, based on a reasonable sampling methodology, the carrier will pay.

- Prevent duplicative and/or serial verification procedures. Carriers whose systems undergo third-party verification should not be subject to further requests for third-party verification, including requests by a series of PSPs, until a reasonable time has passed.

The procedures proposed above set the proper incentives. The rule that the party "losing" the verification procedure pays the verifier's fees maximizes the incentive of the carrier to install accurate systems and minimizes the incentive of the PSP to use a demand for expensive verification procedures as leverage in seeking payment for unfounded claims. Following verification, the PSP and the carrier should engage in a true-up based on the verification results.[5]

3. Status of Contracts Requiring the SBR to Pay the FIXC for Completed <u>Payphone Calls Following a Transition to a SBR-Pays Rule</u>

Although not specifically discussed during the call, the Joint SBRs take this opportunity to reiterate a point made in their Reply Comments (filed July 3, 2003) regarding any transition to a SBR-pays system. For such a transition to be fair, it is essential that the Commission release SBRs from contract provisions they entered into in reliance on the *Second Order on Reconsideration* that require the SBR to pay the FIXC for completed payphone calls. Depending on the contract wording, FIXCs might be tempted to demand that the SBR pay the FIXC as a matter of contract even after the adoption of a rule requiring that the SBR instead of the FIXC pay the PSP. Requiring the SBR to pay twice would be manifestly unfair, and provide the FIXC with an undeserved windfall. Therefore, should the Commission adopt a SBR-pays system, it should as an incident to that step expressly terminate any contractual provisions requiring the SBR to pay the FIXC for payphone calls, using its regulatory power over FIXCs (which are common carriers) under Sections 201 and 205 of the Communications Act.

[5] Consequently, if the verification shows that the carrier overpaid the PSP by a small or large degree, then the PSP will provide a refund as well as pay the verifier's costs

Other members of the Joint SBR coalition listed below who joined in the filing of the opening and reply comments but were not able to participate in the conference call hereby join in the views expressed in this letter by the Joint SBR Participants. The Joint SBRs hope this information is helpful to the Commission in resolving the matters under consideration in this docket.

Respectfully submitted,

CommuniGroup of K.C, Inc., d/b/a CGI
CommuniGroup of Jackson, Inc.
NTS Communications, Inc.

VarTec Telecom, Inc.
Transtel Communications, Inc.
CenturyTel Long Distance, LLC

By their attorneys

/s/ James H. Lister
James H. Lister
McGuireWoods, LLP

cc: Gregory M. Cooke
Darryl Cooper
Henry L. Thaggert, III
Jack Yachbes

James U. Troup